

**ATTACHMENT 9.**

**Continuing Disclosure Undertaking**

**Please Note:**

This document is referred to in **ATTACHMENT 2** (Resolution No. 6512) in this packet as Exhibit B .

EXHIBIT B

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CITY OF SCOTTSDALE  
MUNICIPAL PROPERTY CORPORATION  
EXCISE TAX REVENUE BONDS  
SERIES 2004A

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CONTINUING DISCLOSURE UNDERTAKING

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This Continuing Disclosure Undertaking (the "Disclosure Undertaking") is executed and delivered by the CITY OF SCOTTSDALE, ARIZONA (the "City"), in connection with the issuance by the City of Scottsdale Municipal Property Corporation (the "MPC") of \$\_\_\_\_\_ in aggregate original principal amount of its Excise Tax Revenue Bonds, Series 2004A (the "Bonds"). The Bonds are being issued pursuant to a Trust Indenture, dated as of \_\_\_\_\_, 2004 (the "Indenture"), between the MPC and Wells Fargo Bank, N.A., a national banking association, as trustee. The proceeds of the Bonds are being applied to finance property for the benefit of the City pursuant to an Agreement, dated as of \_\_\_\_\_, 2004 (the "Agreement"), between the MPC and the City. Certain terms are defined in Section 10 hereof.

The City undertakes and agrees as follows:

SECTION 1. Purpose of the Disclosure Undertaking; Conduit Issuer Not Responsible. This Disclosure Undertaking is being executed and delivered by the City for the benefit of the Bondholders and in order to assist each Participating Underwriter in complying with the Rule. The MPC has undertaken no responsibility with respect to any reports, notices or disclosures provided or required pursuant to this Agreement, and has no liability to any person, including any Bondholder, with respect to any such reports, notices or disclosures.

SECTION 2. Annual Information and Audited Financial Statements. The City agrees to provide or cause to be provided to each Repository:

(a) Annual Information for the preceding Fiscal Year not later than the Filing Date for each Fiscal Year; and

(b) Audited Financial Statements for the preceding Fiscal Year not later than the later of the Filing Date for each Fiscal Year or promptly after becoming available to the City.

Any or all of the items listed above may be included by specific reference to other documents; provided that if the document included by reference is not a final official statement, it must have been provided previously to each of the Repositories or the Securities and Exchange Commission, and if the document included by reference is a final official statement, it must be available from the MSRB.

**SECTION 3. Notice of Listed Events and Failure to Provide Annual Information.** The City agrees to provide or cause to be provided to each National Repository or to the MSRB, and to any State Repository, in a timely manner:

(a) notice of the occurrence of any Listed Events with respect to the Bonds, if material (within the meaning of the Rule); and

(b) notice of its failure to provide or cause to be provided the Annual Information on or before the applicable Filing Date.

Notwithstanding the foregoing, notice of Listed Events consisting of bond calls or defeasances need not be given in accordance with this subsection any earlier than the notice of the underlying event is given to the registered owners of affected Bonds pursuant to the Indenture, and notice of the occurrence of a mandatory, scheduled redemption, not otherwise contingent upon the occurrence of an event, is not required if the terms of the redemption pursuant to which the redemption is to occur are set forth in detail in the Official Statement and the only open issue is which Bonds will be redeemed in the case of a partial redemption.

**SECTION 4. Termination of Reporting Obligation.** The obligations of the City pursuant to this Disclosure Undertaking shall terminate at such time as no Bonds remain Outstanding (within the meaning of the Indenture) or all of the Bonds have been legally defeased, redeemed or paid in full, or (b) the City is no longer liable for payments with respect to debt service on the Bonds. If the obligations of the City for payments with respect to debt service on the Bonds pursuant to the Agreement are assumed in full by some other entity or entities, that entity or those entities shall be responsible for compliance with this Disclosure Undertaking in the same manner as if it were the City and the City shall have no further responsibility for compliance.

**SECTION 5. Dissemination Agent.** The City may, from time to time, appoint or engage a dissemination agent to assist it in carrying out its obligations in accordance with this Disclosure Undertaking, and may discharge any dissemination agent, with or without appointing a successor dissemination agent.

**SECTION 6. Amendment; Waiver.** Notwithstanding any other provision of this Disclosure Undertaking, the City may amend this Disclosure Undertaking, and any provision of this Disclosure Undertaking may be waived; provided, however, that no amendment or waiver may take effect unless the following conditions are satisfied:

(a) the amendment or waiver may only be made in connection with a change in circumstances that arises from a change in legal requirements, change in law, or change in the identity, nature or status of an "obligated person" (within the meaning of the Rule) with respect to the Bonds, or the type of business conducted;

(b) this Disclosure Undertaking, as amended or taking into account such waiver, in the opinion of counsel of national reputation experienced in bond or federal securities law selected by the City, would have complied with the requirements of the Rule at the time of the original issuance of the Bonds, taking into account any amendments or interpretations of the Rule, as well as any change in circumstances; and

(c) the amendment or waiver either (i) is approved by the registered owners of the Bonds in the same manner as provided in the Indenture for amendments to the

Indenture with the consent of registered owners of the Bonds, or (ii) does not materially impair the interests of the Bondholders, as determined by the opinion of counsel of national reputation experienced in bond or federal securities law unaffiliated with the City but which may be selected by the City, or as determined by another party unaffiliated with the City but which may be selected by the City.

SECTION 7. Additional Information. Nothing in this Disclosure Undertaking shall be deemed to prevent the City from disseminating any other information, using the means of dissemination set forth in this Disclosure Undertaking or any other means of communication, or including any other information in any Annual Information or notice of occurrence of a Listed Event, in addition to that which is required by this Disclosure Undertaking. If the City chooses to include any information in any Annual Information or notice of occurrence of any Listed Event or any other event, in addition to that which is specifically required by this Disclosure Undertaking, the City shall have no obligation pursuant to this Disclosure Undertaking to update the information or include it in any future Annual Information or notice of occurrence of Listed Event.

SECTION 8. Failure to Perform. Any Bondholder may enforce the City's obligation to provide or cause to be provided information or notice pursuant to this Disclosure Undertaking by commencing an action in a court of competent jurisdiction to seek specific performance by court order to compel the City to provide or cause to be provided such information or notice; provided that any Bondholder must first as a condition precedent to commencing the action provide at least 30 day's prior written notice to the City of its failure to perform, giving reasonable detail of such failure, following which notice the City shall have 30 days to perform. Failure by the City to perform in accordance with this Disclosure Undertaking shall not be deemed an event of default with respect to the Bonds, or an Event of Default pursuant to the Indenture, the Agreement or any other document and the sole remedy pursuant to this Disclosure Undertaking in the event of any failure of the City to comply with this Disclosure Undertaking shall be an action to compel performance.

SECTION 9. Beneficiaries. This Disclosure Undertaking shall inure solely to the benefit of the City and the Bondholders from time to time, and shall create no rights in any other person or entity.

SECTION 10. Definitions. In addition to the definitions set forth in the Indenture which apply to any capitalized term used in this Disclosure Undertaking unless otherwise defined in this Disclosure Undertaking, the following capitalized terms shall have the following meanings:

"Annual Information" means:

(a) quantitative financial information and operating data concerning the operations of the City of the type set forth in the Official Statement as follows: "Security and Sources of Payment - Excise Taxes" and in Appendix C; and

(b) unaudited annual Financial Statements of the City unless Audited Financial Statements are provided at the same time.

In addition to the information described in (a) and (b), (i) if any part of the Annual Information described in (a) can no longer be generated because the operations to which it is related have been materially changed or discontinued, the City will include a statement to that effect as part of the Annual Information for the year in the change or discontinuation occurs, and (ii) the

Annual Information for the year in which any amendment or waiver of a provision of this Disclosure Undertaking occurs shall describe and explain the amendment or waiver, the reason for it and its impact on the type of information being provided, and if the amendment relates to the accounting principles to be followed in preparing financial statements, the Annual Information for the year in which the change is made shall present a comparison (in narrative form and also, if feasible, in quantitative form) between the financial statements prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles.

“Audited Financial Statements” means audited annual Financial Statements of the City.

“Bondholder” means a beneficial owner of a Bond, with beneficial ownership determined on a basis consistent with the provisions of Rule 13d-3 adopted by the Securities and Exchange Commission in accordance with the Securities Exchange Act of 1934, or, if those provisions do not adequately address the situation in question (in the opinion of counsel of national reputation experienced in bond or federal securities law selected by the City) with beneficial ownership determined on the basis of ownership for federal income tax purposes. Any assertion of beneficial ownership must be established by evidence in writing with full documentary support filed with the City.

“Filing Date” means the last business day of the seventh month following the end of each Fiscal Year, the first Filing Date being January 31, 2005.

“Financial Statements” means annual financial statements of the City prepared in conformity with generally accepted accounting principles applicable to governmental units as promulgated from time to time by the Government Accounting Standards Board.

“Fiscal Year” means each fiscal year of the City commencing with the fiscal year beginning July 1, 2003 and ending June 30, 2004.

“Listed Events” means any of the following events:

- (1) principal and interest payment delinquencies;
- (2) non-payment related defaults;
- (3) unscheduled draws on debt service reserves reflecting financial difficulties;\*
- (4) unscheduled draws on credit enhancements reflecting financial difficulties;\*
- (5) substitution of credit or liquidity providers, or their failure to perform;
- (6) adverse tax opinions or events affecting the tax-exempt status of the security;
- (7) modifications to rights of security holders;
- (8) bond calls;

- (9) defeasances;
- (10) release, substitution, or sale of property securing repayment of the securities; and
- (11) rating changes.

\*As of the date of this Disclosure Undertaking, there exist no, and the City has no obligation or intention to provide, obtain or maintain any, debt service reserves, credit enhancements, or credit or liquidity providers with respect to the Bonds.

"MSRB" means the Municipal Securities Rulemaking Board.

"National Repository" means each Nationally Recognized Municipal Securities Information Repository which is recognized as such for purposes of the Rule at the time any information or notice is to be provided pursuant to this Disclosure Undertaking. The National Repositories at the time of delivery of this Disclosure Undertaking are listed in Exhibit A.

"Official Statement" means the final Official Statement dated \_\_\_\_\_, with respect to the initial offering of the Bonds.

"Participating Underwriter" means each broker, dealer, or municipal securities dealer acting as an underwriter in the primary offering of the Bonds, including, without limitation, \_\_\_\_\_.

"Repository" means each National Repository and each State Repository.

"Rule" means Rule 15c2-12(b)(5) adopted by the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934, as applicable to the Bonds.

"State" means the State of Arizona.

"State Repository" means any public or private repository or entity designated by the State as a state repository for the purpose of the Rule and recognized as such by the Securities and Exchange Commission. As of the date of this Disclosure Undertaking, there is no State Repository.

SECTION 11. Governing Law; Forum. This Disclosure Undertaking shall be governed by the law of the State. Any action to enforce this Disclosure Undertaking against the City may be brought only in a State court.

Date: \_\_\_\_\_, 2004

CITY OF SCOTTSDALE, ARIZONA

By: \_\_\_\_\_  
Craig Clifford  
Financial Services General Manager

## EXHIBIT A

### List of Nationally Recognized Municipal Securities Information Repositories at the time of execution and delivery of the Disclosure Undertaking

The list may change from time to time. The Disclosure Undertaking requires that information and notices be provided to each Repository. The list should be checked for changes each time information or notice is to be provided. A current list may be obtained from the Securities and Exchange Commission over the Internet at <http://www.sec.gov/info/municipal/nrmsir>.

#### **Bloomberg Municipal Repository**

100 Business Park Drive  
Skillman, NJ 08558  
Phone: (609) 279-3225  
Fax: (609) 279-5962  
[http://www.bloomberg.com/markets/muni\\_contactinfo.html](http://www.bloomberg.com/markets/muni_contactinfo.html)  
Email: [Munis@Bloomberg.com](mailto:Munis@Bloomberg.com)

#### **DPC Data Inc.**

One Executive Drive  
Fort Lee, NJ 07024  
Phone: (201) 346-0701  
Fax: (201) 947-0107  
Email: [nrmsir@dpccdata.com](mailto:nrmsir@dpccdata.com)

#### **FT Interactive Data**

Attn: NRMSIR  
100 William Street  
New York, NY 10038  
Phone: (212) 771-6999  
Fax: (212) 771-7390 (Secondary Market Information)  
(212) 771-7391 (Primary Market Information)  
<http://www.interactivedata.com>  
Email: [NRMSIR@FTID.com](mailto:NRMSIR@FTID.com)

#### **Standard & Poor's Securities Evaluations, Inc.**

55 Water Street  
45th Floor  
New York, NY 10041  
Phone: (212) 438-4595  
Fax: (212) 438-3975  
[www.jjkenny.com/jjkenny/pser\\_descrip\\_data\\_rep.html](http://www.jjkenny.com/jjkenny/pser_descrip_data_rep.html)  
Email: [nrmsir\\_repository@sandp.com](mailto:nrmsir_repository@sandp.com)